

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND**

**MARYLAND SHALL ISSUE, INC., *et al.*,  
9613 Harford Rd., Ste C #1015  
Baltimore, Maryland 21234-2150,**

*Plaintiffs,*

**No.: 1:22-cv-00865-SAG**

**v.**

**ANNE ARUNDEL COUNTY,  
MARYLAND  
44 Calvert Street  
Annapolis, MD 21401,**

*Defendant.*

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER  
AND IN SUPPORT OF  
PLAINTIFFS' ALTERNATIVE MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

Plaintiffs respectfully move this Court for an order granting a preliminary injunction that enjoins defendant Anne Arundel County, Maryland from enforcing Bill 108-21 as against the plaintiffs in this case. Alternatively, plaintiffs respectfully move this Court for an order granting summary judgment. These motions are supported by the accompanying affidavits of each of the named plaintiffs verifying the truth of the allegations set forth in the Complaint, filed April 4, 2022. A Preliminary Injunction or Summary Judgment should be granted on the face of the pleadings as there are no disputed issues of fact and plaintiffs are entitled to judgment as a matter of law.

Under Bill 108-21, Anne Arundel County prepares “literature relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution and distribute the literature to all establishments that sell guns or ammunition.” Bill 108-21 then requires that licensed firearms dealers in the County, including the plaintiff dealers in this case, make this literature “visible and available”

1 at the business establishments of licensed firearms dealers and to “distribute the literature” to “all  
2 purchasers of guns or ammunition” at such locations. Other than Maryland Shall Issue, Inc., each  
3 plaintiff to this action is a licensed firearms dealer subject to Bill 108-21, and each plaintiff objects to  
4 being commandeered as a distributor for the County’s literature. Bill 108-21 constitutes “compelled  
5 speech” in violation of the plaintiff dealers’ First Amendment rights. Bill 108-21 also violates the  
6 First Amendment rights of persons who visit or do business with a dealer in Anne Arundel County  
7 by effectively chilling the speech of customers who may disagree with the County’s preferred  
8 message

## 10 **STATEMENT OF THE CASE**

### 11 **A. Bill 108-21**

12 On January 10, 2022, the Defendant, Anne Arundel County, Maryland (“the County”) signed  
13 into law Bill 108-21 (“the Bill”), a copy of which is attached to the Complaint as Exhibit A and is  
14 incorporated herein in its entirety by reference. Bill 108-21 became effective on April 10, 2022.  
15 Bill 108-21 amends the Anne Arundel County Code, Article 12, Title 6, Section 12-6-108, to provide  
16 in subsection (A) through (C):

17 (A) **Duties of Health Department.** The Anne Arundel County health department shall  
18 prepare literature relating to gun safety, gun training, suicide prevention, mental health, and  
19 conflict resolution and distribute the literature to all establishments that sell guns or  
20 ammunition.

21 (B) **Requirements.** Establishments that sell guns or ammunition shall make the literature  
22 distributed by the health department visible and available at the point of sale. These  
23 establishments shall also distribute the literature to all purchasers of guns or ammunition.

1           C) **Enforcement.** An authorized representative of the Anne Arundel County Health  
2           Department may issue a citation to an owner of an establishment that sells guns or ammunition  
3           for a violation of subsection 8 (b).  
4

5           Bill 108-21 amends the Anne Arundel County Code, Article 12, Title 6, Section 12-6-108(D), to  
6           impose a penalty for any violation of Bill 108-21, stating that “a violation of this section is a Class C  
7           civil offense pursuant to § 9-2-101 of this code.” A Class C civil offense under Section 9-2-101 of the  
8           County Code is punishable by a fine of “\$500 for the first violation and \$1,000 for the second or any  
9           subsequent violation.”  
10

11           The County’s literature takes the form of two pieces. The first is a pamphlet entitled “Firearms  
12           and Suicide Prevention” published jointly by the National Shooting Sports Foundation (“NSSF”) and  
13           the American Foundation for Suicide Prevention. A copy of that pamphlet, as downloaded from the  
14           NSSF website at <https://bit.ly/3rgLt6r>, is attached as Exhibit B to the Complaint and is incorporated  
15           herein in its entirety by reference. The text and layout of this downloaded copy is identical to the  
16           printed copy distributed by the County. The second piece of literature distributed by the County on or  
17           about April 8, 2022, is a single page measuring 6” by 6,” setting forth information concerning County  
18           “resources” for “conflict resolution.” A copy of that piece of literature is attached as Exhibit C to the  
19           Complaint and is incorporated herein in its entirety by reference.  
20

21           B.        **The Parties**  
22

23           Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at 9613  
24           Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service certified,  
25           Section 501(c)(4), non-profit, non-partisan membership organization with approximately 2000  
26           members statewide. MSI is dedicated to the preservation and advancement of gun owners’ rights in  
27           Maryland. It seeks to educate the community about the right of self-protection, the safe handling of  
28

1 firearms, and the responsibility that goes with carrying a firearm in public. The purposes of MSI  
2 include promoting the exercise of the Second Amendment right to purchase arms. MSI engages in  
3 education, research, and legal action focusing on the constitutional right to privately own, possess and  
4 carry firearms. MSI has members who live in Anne Arundel County and purchase firearms and/or  
5 ammunition from firearms dealers in Anne Arundel County. Each of the other plaintiffs in this matter  
6 is a corporate member of MSI.

7 MSI brings this suit on behalf of its members who are firearms dealers in Anne Arundel  
8 County, and who are required to display and distribute County literature by Bill 108-21, and who are  
9 thus directly regulated by Bill 108-21. Complaint ¶ 9. MSI also brings this suit in its representational  
10 capacity on behalf of its individual members who visit or do business with Anne Arundel County  
11 dealers and sellers of ammunition and who are thus subject to the forced receipt or display of literature  
12 required by Bill 108-21. (Id.). MSI has one or more individual members who live in Anne Arundel  
13 County and/or have purchased or intend to purchase firearms and/or ammunition from dealers in Anne  
14 Arundel County.

15 The remaining plaintiffs, FIELD TRADERS, LLC, CINDY'S HOT SHOTS, INC.,  
16 PASADENA ARMS, LLC, and WORTH-A-SHOT, INC. (hereinafter collectively "plaintiff  
17 dealers"), are all private federally and Maryland State licensed firearms dealers located in Anne  
18 Arundel County. Each of these plaintiff dealers regularly sells firearms, including regulated firearms,  
19 as well as ammunition for firearms. Each of the plaintiff dealers objects to Bill 108-21 because the  
20 Bill commandeers it to act as a mouthpiece and conduit for County communications mandated by Bill  
21 108-21. Each of the plaintiff dealers alleges that Bill 108-21 requires it to involuntarily display and  
22 distribute County literature with which the plaintiff disagrees and each alleges that it does not wish to  
23 be a party to these communications or to be seen by its customers and potential customers as endorsing  
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1 implicitly or otherwise the County's messages and opinions set out in the literature required by Bill  
 2 108-21. Each of the plaintiff dealers is a corporate member of MSI. Complaint ¶ 10-13. Each of the  
 3 plaintiff dealers alleges that it is regulated directly by Bill 108-21 and each alleges that it has standing  
 4 to sue on its own behalf and on behalf of its customers and other persons who are similarly situated.  
 5 Id. at ¶ 14.

6  
 7 The Defendant is Anne Arundel County, Maryland. Anne Arundel County ("the County") is  
 8 a chartered home rule county within the meaning of Article XI-A of the Maryland Constitution. Bill  
 9 108-21, challenged herein, is a County ordinance and thus an official policy of the County. The  
 10 County may thus be named and sued *eo nomine* under 42 U.S.C. § 1983. *Monell v. Department of*  
 11 *Social Services*, 436 U.S. 658 (1978); *Starbuck v. Williamsburg James City County School Board*, 28  
 12 F.4th 529, 533-34 (4th Cir. 2022); *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003). Complaint ¶ 15.

14  
**ARGUMENT**

15 **I. STANDARD OF REVIEW**

16 **A. Summary Judgment**

17 Pursuant to Rule 56, FRCP, plaintiffs request summary judgment granting declaratory relief  
 18 and a permanent injunction enjoining the County from enforcing Bill 108-21 against them or any  
 19 other member of MSI. Rule 56 requires that "[t]he court shall grant summary judgment if the movant  
 20 shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment  
 21 as a matter of law." The party seeking summary judgment has the burden of establishing the genuine  
 22 absence of disputed issues of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

23 To defeat a motion for summary judgment, the defendant must do more than create "some  
 24 alleged factual dispute between the parties." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48  
 25 (1986). Rather, the defendant must demonstrate a genuine issue to a material fact through admissible  
 26

1 evidence. Thus, the “non-moving party must present sufficient evidence such that reasonable jurors  
2 could find by a preponderance of the evidence for the non-movant, for an apparent dispute is not  
3 genuine within contemplation of the summary judgment rule unless the non-movant’s version is  
4 supported by sufficient evidence to permit a reasonable [finder of fact] to find the facts in his [or her]  
5 favor.” *Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 818 (4th Cir. 1995). ‘Where the record taken  
6 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine  
7 issue for trial.’” *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Matsushita v. Zenith Radio*  
8 Corp., 475 U.S. 574, 587 (1986)).

9  
10 The questions presented on this motion are pure questions of law and there are no material  
11 disputed issues of fact. The factual predicates for this suit are verified by the accompanying  
12 declarations of the plaintiffs, each of which attest to the factual allegations of the Complaint. The  
13 material facts are simply stated. First, the County has enacted Bill 108-21. (Complaint Exhibit A).  
14 Second, pursuant to Bill 108-21, the County has prepared the literature required by Bill 108-21 and  
15 distributed that literature to dealers County-wide. (Complaint, Exh. B & C). Third, each of the plaintiff  
16 dealers are Anne Arundel County dealers who are subject to Bill 108-21, and thus each must “display”  
17 and “distribute” this literature, as required by Bill 108-21. Fourth, each of the plaintiffs object to this  
18 forced display and distribution of the County’s literature. Complaint ¶¶ 9-13. Fifth, each of the  
19 plaintiff-dealers has received this literature and each such dealer is complying with Bill 108-21 only  
20 in order to avoid the fines that would be imposed under Bill 108-21 for non-compliance. See  
21 Declarations of plaintiff-dealers at ¶ 3. But for Bill 108-21, the plaintiff dealers would not display or  
22 distribute the literature distributed to the dealers by the County. (Id.). A violation of these obligations  
23 to display and distribute is punishable by a civil fine of \$500 for the first offense and \$1,000 for a  
24

1 second and subsequent offenses. Complaint ¶ 6. The County cannot reasonably dispute any of these  
 2 basic facts.

3       **B.     Preliminary Injunction and Temporary Restraining Order**

4       In the alternative, plaintiffs have moved this Court for an order granting a preliminary  
 5 injunction and a temporary restraining order (“TRO”) barring the County from enforcing Bill 108-  
 6 21. A party seeking a preliminary injunction or temporary restraining order must establish the  
 7 following elements: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable  
 8 harm in the absence of preliminary relief; (3) that the balance of equities tips in the party's favor; and  
 9 (4) why the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,  
 10 20 (2008). “A preliminary injunction is an extraordinary remedy intended to protect the status quo  
 11 and prevent irreparable harm during the pendency of a lawsuit.” *Di Biase v. SPX Corp.*, 872 F.3d 224,  
 12 230 (4th Cir. 2017) (collecting case law). “[A] preliminary injunction can also act to restore, rather  
 13 than merely preserve, the status quo, even when the nonmoving party has disturbed it.” *Id.* at 231.

14       While all four elements for a preliminary injunction must be satisfied (*id.*), irreparable injury  
 15 and a likelihood of success are the “most critical.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). The  
 16 first element of a likelihood of success “does not require “a ‘certainty of success,’” but rather only  
 17 that “the plaintiff ‘must make a clear showing that he is likely to succeed at trial.’” *St. Michael's  
 18 Media, Inc. v. Mayor and City Council of Baltimore*, --- F.Supp.3d ----, 2021 WL 4772927 at 14 (D.  
 19 Md. 2021) (quoting *Di Biase* v. 872 F.3d at 230). While a plaintiff must also show irreparable harm,  
 20 *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018), “[t]he loss of First Amendment freedoms, for even  
 21 minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347,  
 22 373 (1976) (plurality opinion). See also *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir.  
 23 2011) (same). Similarly, the public interest is served, as a matter of law, by enjoining the  
 24 25 26 27 28

1 unconstitutional actions of a locality. See, e.g., *Legend Night Club*, 637 F.3d at 303 (“upholding  
 2 constitutional rights is in the public interest”). While the plaintiff must show that the balance of  
 3 equities favors it, “[a] state is ‘in no way harmed by issuance of a preliminary injunction which  
 4 prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the  
 5 system is improved by such an injunction.’” *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521  
 6 (4th Cir. 2002) (citation omitted). As detailed below, all of these elements are easily satisfied here.

## 8 **II. BILL 108-21 VIOLATES THE FIRST AMENDMENT RIGHTS OF PLAINTIFFS**

9 The Complaint alleges that Bill 108-21 violates the First Amendment rights of plaintiffs. “The  
 10 First Amendment is applicable to the States through the Due Process Clause of the Fourteenth  
 11 Amendment.” *Virginia State Bd. of Pharmacy v. Va. Citizens Consumer Council Inc.*, 425 U.S. 748,  
 12 749 n.1 (1976); *Lovell v. Griffin*, 303 U.S. 444, 450 (1938). This violation is multifaceted and  
 13 ongoing.

14 The Supreme Court’s “leading First Amendment precedents have established the principle  
 15 that freedom of speech prohibits the government from telling people what they must say.” *Rumsfeld*  
 16 v. *Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). “[N]o official, high or  
 17 petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of  
 18 opinion or force citizens to confess by word or act their faith therein.” *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). Any state action “which forces an individual ... to be an  
 19 instrument for fostering public adherence to an ideological point of view” is unacceptable under the  
 20 First Amendment. *Wooley v. Maynard*, 430 U.S. 705, 717 (1977).

21 Persons have a First Amendment “right not to utter political and philosophical beliefs that the  
 22 state wishes to have said.” *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City  
 23 Council Of Baltimore*, 879 F.3d 101, 111 (4th Cir.), cert. denied, 138 S.Ct. 2710 (2018). There is a

1 First Amendment right “not to speak” because “the right to refrain from speaking is concerned with  
2 preventing the government from “[c]ompelling individuals to mouth support for views they find  
3 objectionable.”” *Overbey v. Mayor of Baltimore*, 930 F.3d 215, 222 (4th Cir. 2019) (quoting *Janus v.*  
4 *Am. Fed'n of State, Cty., & Mun. Employees, Council*, 138 S.Ct. 2448, 2463 (2018)). Under the First  
5 Amendment, the government may not command a person to serve as a “conduit” for government  
6 speech, and may not be ““forced either to appear to agree with [the intruding leaflet] or to respond.””  
7 *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 575 (1995)  
8 (quoting *Pacific Gas & Electric Co. v. Public Utilities Comm'n*, 475 U.S. 1, 15 (1986) (plurality  
9 opinion) (brackets the Court’s)).

12 By its terms, Bill 108-21 compels a dealer to “display” and “distribute” County-sponsored  
13 literature directed at “gun safety, gun training, suicide prevention, mental health, and conflict  
14 resolution.” This literature and requirement is “content-based” because “[b]y compelling individuals  
15 to speak a particular message, such notices “alte[r] the content of [their] speech.” *National Institute*  
16 *of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2371 (2018) (“NIFLA”) (quoting *Riley v.*  
17 *National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 795 (1988). “The Supreme Court has  
18 emphasized that there is no constitutional difference between ‘compelled statements of opinion’ and  
19 ‘compelled statements of fact’ because ‘either form of compulsion burdens protected speech.’”  
20 *Washington Post v. McManus*, 944 F.3d 506, 518 (4th Cir. 2019) (quoting *Riley*, 487 U.S. 797-98).  
21 In every sense of the word, Bill 108-21 seeks to compel the speech of dealers by forcing them, upon  
22 pain of a substantial civil fine, to act as an agent for the speech that the County wishes to promote and  
23 sponsor.

26 Bill 108-21 does not purport to regulate commercial speech of the plaintiff dealers because  
27 the County’s literature “is not limited to ‘purely factual and uncontroversial information about the  
28

1 terms under which ... services will be available.”” *NIFLA*, 138 S.Ct. at 2372 (quoting and  
2 distinguishing *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626,  
3 651 (1985)). Opinions vary widely concerning “gun safety, gun training, suicide prevention, mental  
4 health, and conflict resolution.” Nothing in the County’s literature concerns or purports to regulate  
5 any conduct of the dealers. *NIFLA*, 138 S.Ct. at 2372. The display and distribution requirements of  
6 Bill 108-21 have no purpose other than to commandeer dealers and other sellers of ammunition into  
7 acting as conduits for the opinions and messages adopted by the County.

8  
9 Bill 108-21 violates the First Amendment’s prohibition on compelled speech by compelling  
10 the plaintiff dealers to display and distribute the County literature and thus act as involuntary conduits  
11 for the County’s message “relating to gun safety, gun training, suicide prevention, mental health, and  
12 conflict resolution.” Bill 108-21 also violates plaintiff dealers’ First Amendment right “not to speak”  
13 on such subjects, as the plaintiff dealers are compelled by Bill 108-21 to display and distribute the  
14 County’s literature. By compelling the plaintiff dealers to display and distribute the County’s  
15 literature, Bill 108-21 violates the First Amendment by forcing the plaintiff dealers either to appear  
16 to agree with the County’s literature or respond to the County’s literature by affirmatively speaking  
17 where the plaintiff dealers might well prefer to remain silent.

18  
19 Bill 108-21 also violates the First Amendment rights of customers of dealers, including MSI  
20 members, because customers are chilled in the exercise of their own First Amendment rights by the  
21 forced distribution of the County’s literature to such customers. Specifically, recipients of such  
22 official communications from the County will objectively be less willing to articulate their own views  
23 “relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution,”  
24 especially where, as here, the dealer is the distributor and thus may be reasonably understood to  
25 endorse the views of the literature that Bill 108-21 compels the dealer to distribute and display. As  
26  
27  
28

1 explained infra, Part III, customers wishing to exercise their Second Amendment rights to purchase  
 2 firearms and/or ammunition, are forced to participate in the County's distribution scheme every time  
 3 such a purchase is made, and indeed, every time the customer merely visits a dealer who is forced to  
 4 display the County literature.  
 5

6 **III. EACH OF THE PLAINTIFFS HAS STANDING TO SUE**

7 **A. Plaintiff Dealers Have Standing**

8 Each of the plaintiffs in this case has standing to challenge Bill 108-21. Each of the plaintiff  
 9 dealers has Article III standing to sue on its own behalf as each dealer is directly regulated by Bill  
 10 108-21. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) ("Where "the plaintiff is  
 11 himself an object of the action ... there is ordinarily little question that the action or inaction has caused  
 12 him injury, and that a judgment preventing or requiring the action will redress it."). See also *Maryland*  
 13 *Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 212-13 (4th Cir. 2020) (applying *Lujan* to sustain standing  
 14 of a plaintiff firearms dealer). Each plaintiff dealer also has standing to sue on behalf of its customers  
 15 and "other similarly situated persons" for injuries inflicted by Bill 108-21. *Maryland Shall Issue, Inc.*,  
 16 971 F.3d at 216. If one plaintiff has standing, it is unnecessary to determine the standing of other  
 17 plaintiffs. (Id., 971 F.3d at 214 & n.5). *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (same).

20 Each of the plaintiff dealers is chilled in the exercise of its Amendment rights and thus has  
 21 been injured by Bill 108-21. "[I]n First Amendment cases we have relaxed our rules of standing  
 22 without regard to the relationship between the litigant and those whose rights he seeks to assert  
 23 precisely because application of those rules would have an intolerable, inhibitory effect on freedom  
 24 of speech." *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940) (quoted in *Munson*, 467 U.S. at 957  
 25 n.7). *Cooksey v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013) ("The Supreme Court of the United States  
 26 has explained that standing requirements are somewhat relaxed in First Amendment cases."); *Benham*  
 27

1 *v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011) (noting that a “cognizable injury under the  
 2 First Amendment is self-censorship, which occurs when a claimant is chilled from exercising her right  
 3 to free expression”) (internal quotation marks omitted). Customers and persons intending to purchase  
 4 firearms and/or ammunition in the County, including MSI members, have standing under these  
 5 principles.

7 Bill 108-21 went into effect on April 10, 2022, and there is no indication that the County will  
 8 not fully enforce its provisions. The plaintiff dealers have received the County’s literature and are  
 9 expected to comply with Bill 108-21, and do so only to avoid the fines imposed by Bill 108-21. See  
 10 Declarations of plaintiff dealers at ¶ 3. With each passing day, the plaintiffs suffer irreparable harm  
 11 to their rights because of Bill 108-21. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“loss of First  
 12 Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable  
 13 injury”). “An allegation of future injury may suffice if the threatened injury is ‘certainly impending,’  
 14 or there is a ‘substantial risk’ that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S.  
 15 149, 158 (2014) (citation omitted). See also *Davidson v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019).  
 16  
 17

18 **B. MSI Has Representational Standing**

19 This Court need not reach the standing of Maryland Shall Issue, as each of the plaintiff dealers  
 20 has standing to sue on its own behalf and on the behalf of its customers. *Maryland Shall Issue, Inc.*,  
 21 971 F.3d at 214, n.5, & 216. That said, MSI likewise has standing to sue on behalf of its members  
 22 who visit or do business with Anne Arundel County dealers and sellers of ammunition and who are  
 23 thus subject to the forced receipt or display of literature required by Bill 108-21. See *Hunt v.*  
 24 *Washington State Apple Advert. Com'n*, 432 U.S. 333, 342 (1977); *Warth v. Seldin*, 422 U.S. 490,  
 25 511 (1975) (“[S]o long as the nature of the claim and of the relief sought does not make the individual  
 26 participation of each injured party indispensable to proper resolution of the cause, the association may  
 27  
 28

1 be an appropriate representative of its members, entitled to invoke the court's jurisdiction."). See also  
2 *Retail Industry Leaders Ass' v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007) ("[a]ssociational standing  
3 may exist even when just one of the association's members would have standing").  
4

5 MSI has one or more individual members who live in Anne Arundel County and/or have  
6 purchased and/or intend to purchase firearms and/or ammunition from dealers in Anne Arundel  
7 County. Each of MSI's members who do business at Anne Arundel County firearms dealers are  
8 injured by the forced display and receipt of County literature when they exercise their Second  
9 Amendment right to purchase firearms or ammunition from Anne Arundel County dealers. The  
10 interests that MSI seeks to protect are germane to MSI's purpose and neither the claims asserted herein  
11 nor the relief requested require the participation of MSI's individual members. MSI seeks only  
12 prospective injunctive and declaratory relief (not damages) on behalf of its members who have  
13 purchased or may purchase firearms and/or ammunition from Anne Arundel County dealers and  
14 outlets that are subject to Bill 108-21. See *United Food and Commercial Workers Union Local 751*  
15 v. *Brown Group, Inc.*, 517 U.S. 544, 546 (1996).  
16

17 The harms inflicted by Bill 108-21 are multifaceted. The Second Amendment protects "the  
18 right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of*  
19 *Columbia v. Heller*, 554 U.S. 570, 635 (2008). That right is fundamental and thus fully  
20 incorporated as against the States under the Fourteenth Amendment. *McDonald v. City of Chicago*,  
21 561 U.S. 742, 767 (2010) (holding that "the right to keep and bear arms is fundamental to our  
22 scheme of ordered liberty"). Law-abiding, responsible citizens have a Second Amendment right  
23 to purchase firearms. *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc),  
24 *cert. denied*, 138 S.Ct. 1988 (2018) ("the core Second Amendment right to keep and bear arms for  
25 self-defense 'wouldn't mean much' without the ability to acquire arms"). Law-abiding responsible  
26

1 citizens have a Second Amendment right to purchase ammunition. *Jackson v. City and County of*  
 2 *San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014), *cert. denied*, 576 U.S. 1013 (2015) (“without  
 3 bullets, the right to bear arms would be meaningless”).  
 4

5 Restraints on dealers necessarily affect customers of dealers. As a matter of federal law,  
 6 the acquisition of firearms generally takes place through licensed dealers. See, e.g., 18 U.S.C. §  
 7 922(a)(3),(5), § 922(b)(3). Maryland law also provides that a private sale of a long gun to non-  
 8 family members can only be accomplished through a federal NICS background check as facilitated  
 9 by a federally licensed dealer, such as the plaintiff dealers. MD Code, Public Safety, § 5-204.1. A  
 10 private sale of a handgun may likewise be facilitated by a State licensed dealer, such as plaintiff  
 11 dealers. MD Code, Public Safety, § 5-124(a)(1). While ammunition need not be sold through  
 12 dealers, it is common knowledge and a matter of common sense that such sales often take place  
 13 through dealers, either in stand-alone sales, or in connection with the sale of a firearm. Each of the  
 14 plaintiff dealers in this case thus stocks and sells ammunition. Complaint ¶¶ 10-13. See *Celotex*  
 15 *Corp.*, 477 U.S. at 326 (employing “common sense” in a summary judgment context); *Haze v.*  
 16 *Harrison*, 961 F.3d 654, 659 (4th Cir. 2020) (same).  
 17

18 Because Bill 108-21 applies to all sellers of firearms and ammunition in Anne Arundel  
 19 County, and because, as a practical matter, customers must use licensed dealers to purchase firearms,  
 20 such purchasers of firearms and ammunition are effectively held captive to the County’s distribution  
 21 of its literature if they wish to exercise their Second Amendment right to purchase firearms and  
 22 ammunition. Cf. *Hill v. Colorado*, 530 U.S. 703, 717-18 (2000) (“The unwilling listener’s interest in  
 23 avoiding unwanted communication has been repeatedly identified in our cases” and this interest is  
 24 especially placed at risk where ““the degree of captivity makes it impractical for the unwilling viewer  
 25 or auditor to avoid exposure””). Such purchasers, as a practical matter, are thus unable to avoid  
 26

1 exposure to unwanted speech by the County if they wish to exercise this fundamental constitutional  
2 right in the County.

3 The chilling effect of Bill 108-21 is thus two fold. First, customers are chilled in the exercise  
4 of their own speech because they will objectively be less willing to articulate their own views “relating  
5 to gun safety, gun training, suicide prevention, mental health, and conflict resolution,” where the  
6 dealer is the distributor and thus may be reasonably understood to endorse the views of the literature  
7 required by Bill 108-21. Second, customers are chilled in the exercise of their Second Amendment  
8 rights because such exercise is conditioned on the forced receipt of the County’s literature. The  
9 County may not chill the exercise of First Amendment rights by burdening Second Amendment rights  
10 or *vice versa*. Cf. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (a government “may not deny a  
11 benefit to a person on a basis that infringes his constitutionally protected interests especially, his  
12 interest in freedom of speech”); *Elrod*, 427 U.S. at 359 (same). The County may not condition a  
13 customer’s access to a dealer’s store or condition the dealer’s operation upon the dealer’s and the  
14 customer’s acquiescence to the County’s forced display and distribution of its message.

15 These harms are sufficient injury to confer standing on customers, including MSI members,  
16 who purchase or who intend to purchase, firearms or ammunition from Anne Arundel County dealers.  
17 *Secretary of State of Md. v. Joseph H. Munson Co., Inc.* 467 U.S. 947, 956-57 (1984) (“Litigants,  
18 therefore, are permitted to challenge a statute not because their own rights of free expression are  
19 violated, but because of a judicial prediction or assumption that the statute’s very existence may cause  
20 others not before the court to refrain from constitutionally protected speech or expression.”) (quoting  
21 *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)).

1           **IV. RELIEF REQUESTED**

2           Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to injunctive and declaratory relief and  
3 nominal damages for the foregoing violations of their rights. *Uzuegbunam v. Preczewski*, 141 S.Ct.  
4 792 (2021). Plaintiffs are also entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C.  
5 § 1988. However, attorney fees are collateral to the merits and thus may be addressed separately at a  
6 future time. See, e.g., *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199-200 (1988). A TRO  
7 and a preliminary injunction, enjoining the defendant from enforcing Bill 108-21, is essential to  
8 maintain the *status quo* pending further litigation. In the alternative, the Court should enter summary  
9 judgment to plaintiffs, awarding declaratory relief that Bill 108-21 violates the First Amendment  
10 rights of plaintiffs and enter a final permanent injunction enjoining defendant from enforcing Bill  
11 108-21.

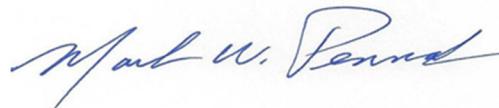
12           Given the difficulty of showing actual monetary damages at this early stage of the proceeding,  
13 the plaintiff dealers should be awarded nominal damages for the foregoing violations of their rights.  
14 *Uzuegbunam*, 141 S.Ct. at 800 (“the prevailing rule, ‘well established’ at common law, was ‘that a  
15 party whose rights are invaded can always recover nominal damages without furnishing any evidence  
16 of actual damage.’”) (citation omitted). See also *Carey v. Piphus*, 435 U.S. 247, 266 (1978) (a  
17 violation of constitutional rights is “actionable for nominal damages without proof of actual injury”).  
18 The rights of each of the plaintiff dealers have already been invaded by the forced distribution of the  
19 County literature every day that the dealers have been open for business since the April 10, 2022,  
20 effective date of Bill 108-21. Those violations are complete and every additional day of compelled  
21 compliance creates a new violation. Nominal damages of \$1.00 for each day that each of the plaintiff  
22 dealers have been subjected to the requirements of Bill 108-21 are thus appropriate. See *Williams v.*  
23 *Hobbs*, 662 F.3d 994, 1010-11 (8th Cir. 2011) (holding that nominal damages are measured by  
24  
25  
26  
27  
28

1 reference to each constitutional violation). Again, MSI seeks only prospective declaratory and  
2 equitable relief (not damages) on behalf of its members who are customers. There is every reason to  
3 enter summary judgment in this case without further ado and thus resolve this matter expeditiously.  
4

## 5 CONCLUSION

6 For all the forgoing reasons, plaintiffs' motion for a TRO and a preliminary injunction should  
7 be granted. In the alternative, the Court should enter summary judgment in favor of plaintiffs on the  
8 merits and enter permanent injunctive and declaratory relief.  
9

10 Respectfully submitted,

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